
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

COHEN BRAFFITS ESTATES
DEVELOPMENT, LLC, a New York limited
liability company; BRAFFITS CREEK
ESTATES, LLC, a Utah limited liability
company,

Plaintiffs,

v.

SHAE FINANCIAL GROUP, LLC, a Utah
limited liability company; SOUTHWEST
UTAH PROPERTIES, LLC, a Utah limited
liability company; FRANK “TONY”
ALLEN, individually and in his capacity as
trustee of the FRANK ALLEN LIVING
TRUST; and G. TROY PARKINSON, an
individual,

Defendants.

**ORDER DENYING PLAINTIFFS’
MOTION FOR TEMPORARY
RESTRAINING ORDER WITHOUT
PREJUDICE**

Case No. 4:23-cv-00031-RJS

Chief Judge Robert J. Shelby

On April 21, 2023, Plaintiffs initiated this action against the Defendants.¹ On April 26, Plaintiffs filed their F.R.C.P. 65 Motion for Temporary Restraining Order and Preliminary Injunction.² Plaintiffs also filed a separate Statement of Facts and Evidence in Support of the Motion.³ In the Motion, Plaintiffs request a “TRO and preliminary injunction enjoining Defendants from selling Braffits Mountain, a one-of-a-kind, irreplaceable real property.”⁴ They further argue a “TRO should issue without notice” and request “an injunction for the shortest

¹ ECF 1.

² ECF 8.

³ ECF 9–11.

⁴ ECF 8 at 34.

time possible until Defendants can ‘be heard in opposition.’”⁵ For the reasons explained below, the court DENIES the Motion without prejudice.

Federal Rule of Civil Procedure 65 states a district court may issue a temporary restraining order without notice only if two conditions are met.⁶ First, “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.”⁷ Second, “the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.”⁸

Plaintiffs’ counsel have not provided a certification explaining efforts they have made to provide notice to the Defendants that Plaintiffs are seeking a temporary restraining order.⁹ Nor is there a certification explaining why notice to the Defendants should not be required.¹⁰

To be sure, the Motion states, “Defendants are believed to be closing the sale soon,”¹¹ and the Statement of Facts alleges Defendant Southwest Utah Properties, LLC stated it would be meeting with the purchaser “on or after Monday, April 24, 2023.”¹² But those statements are not sufficient to satisfy Rule 65’s certification requirement.¹³

Moreover, at the end of the Motion, Plaintiffs included a Certificate of Service, indicating the Motion was mailed or emailed to the Defendants and an attorney who represented the

⁵ *Id.* at 36–37.

⁶ Fed. R. Civ. P. 65(b)(1).

⁷ *Id.* at R. 65(b)(1)(A).

⁸ *Id.* at R. 65(b)(1)(B).

⁹ *See generally* ECF 8.

¹⁰ *See id.*

¹¹ *Id.* at 37.

¹² ECF 9 at 58.

¹³ *See* Fed. R. Civ. P. 65(b)(1)(B).

Defendants in related litigation.¹⁴ The Certificate of Service does not provide enough information for the court to determine if notice was given, but it appears to undercut Plaintiffs' request for a temporary restraining order without notice.

For the reasons provided, the court concludes Plaintiffs have not satisfied their burden of demonstrating it is appropriate to issue a temporary restraining order without notice. The Motion is thus DENIED without prejudice.

SO ORDERED this 26th day of April 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'RJS', is written over a horizontal line.

ROBERT J. SHELBY
United States Chief District Judge

¹⁴ ECF 8 at 38.